IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

CIVIL REVISION APPLICATION NO. 19 OF 2005

The New India Assurance Co. Ltd.
Velho Building, 3rd Floor,
Panaji-Goa. .... Petitioner

Versus

1. Smt. Rosario Afonso e Rodrigues
   aged 54 years,
   widow of late Francis Rodrigues,
   Resident of Girkar Waddo,
   Arambol Pernem-Goa.

2. Sebastiao Rodrigues
   Son of late Francis Rodrigues
   Resident of Girkar Waddo,
   Arambol Pernem-Goa.

3. Cyrilo Rodrigues
   Son of late Francis Rodrigues
   Resident of Girkar Waddo,
   Arambol Pernem-Goa.

4. Mr. Francesca Guerra,
   Italian National,
   Presently residing at
   Junnes Waddo,
   Mandrem, Pernem-Goa.
   (deleted as per order dated 3/10/06
   passed by the Hon'ble Court). .... Respondents

Shri E. Afonso, Advocate for the Petitioner.

Shri V. Menezes, Advocate for Respondents No. 1,2 & 3.

CORAM : **P.V. KAKADE, J.**

DATE : **13th NOVEMBER, 2006**

ORAL ORDER :

Heard the learned Counsel for both the parties.

2. The petitioner, Insurance Company has preferred this petition against the order passed by the Presiding Officer, Motor Accident Claims Tribunal, Mapusa in Claim Petition No. 49 of 2003, holding that the respondents in that petition were jointly and severally liable to pay the compensation in the amount of Rs. 4,73,860/- to the claimants which shall carry interest at the rate of 9% per annum from the date of the petition till actual payment. It was further directed that 50% of the compensation shall be awarded in favour of the claimant no.1, being the mother of the deceased, while the balance 50% shall be apportioned equally between the claimants no. 2 & 3, who are the brothers of the deceased. The petition came to be allowed with costs.

3. The claimants/respondents came with the case that Manuel Rodrigues, since deceased, aged 26 years was working as a lifeguard in the

Tourism Department of Goa, Panaji and on a monthly salary of Rs. 3,250/-. He met with an accident driven by the respondent no.1 and insured with respondent no.2, the present petitioner. Accident occurred on 14/02/2003 in the afternoon at Askawado, Mandrem. He had succumbed to the injuries on the same day. The claimants are the mother who is more than 60 years old and brothers of the deceased, who claimed compensation of Rs. 4,28,000/- on the basis of the structured formula and after deducting one-third towards his personal expense. The respondents were jointly and severally liable to pay the compensation.

4. The petition was contested by present applicant, respondent no.2 alone on various grounds, inter alia, submitting that the driver of the vehicle was not duly licensed and, therefore, on account of breach of the specific policy condition, the respondent no.2 was not liable to indemnify the respondent no.1. On facts the respondent no.2 also disputed the age, earnings, dependency and the manner of the accident resulting in the death of the scooter rider.

5. After hearing both the parties and considering the evidence on record, the tribunal came to the conclusion that the claimants were entitled

to the compensation in the sum of Rs. 4,73,860/- and allowed the petition in that manner.

Hence, the present revision application.

6. Mr. Afonso, the learned Counsel for the revision petitioner has raised the sole question to the effect that the learned tribunal member has wrongly applied the multiplier of 18 while assessing the amount of compensation. It was submitted that the proper multiplier as the ready reckoner of schedule 2 to the Motor Vehicles Act would have been that of 5, as the claimant-mother was over age of 60 years. In support of his submission, he relied upon several judgments of the Apex Court. On the other hand, it was submitted on behalf of the respondent-claimant that the learned member of the tribunal has rightly applied the multiplier of 18, as the deceased was of the age of 26 years and his earnings were proved to be Rs. 3,250/- per month as per the evidence on record. It was also pointed out that the mother was not the only claimant, but his young brothers who were dependent upon him were also the claimants. The learned Counsel for the applicant brought to my notice provision of Section 166 of the Motor Vehicles Act in order to canvass the point to the effect that mother was the only legal representative of the deceased and, therefore, the dependency of

the brothers could not have been considered by the member of the tribunal. At this juncture itself, I must note that for the purpose of Motor Vehicles Act, the legal representatives who are the dependents, would be entitled to the compensation as contemplated under Section 166 of the Motor Vehicles Act and, therefore, submission advanced on behalf of the revision petitioner is devoid of any merits.

7. Be as it may, perusal of the entire order passed by the member of the tribunal vis-a-vis evidence on record, there is no doubt whatsoever that the income of the deceased was rightly held to be Rs. 3,250/- per month. No doubt it is true that the net income of the deceased came to be Rs. 2,400/-. However, the fact remains that the total salary was Rs. 3,250/- and the deduction which was made was that of provident fund etc. which amount was the amount of the deceased himself.

8. The bone of contention raised on behalf of the revision petitioner is of the use of multiplier of 18. In support of his objections of such use of multiplier, the learned Counsel for the revision petitioner as noted earlier put reliance on the 2nd schedule of Section 163 (a) of the Motor Vehicles Act and also cited several rulings of the Apex Court in that

regard. However, on perusal of all his judgments, it is to be noted that it is laid down by the Apex Court that the 2nd Schedule to the Motor Vehicles Act suffers from many defects. The same is to serve as a guide, but cannot be said to be an invariable ready reckoner. However, appropriate highest multiplier has been held to be 18. The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian citizen starts independently earning and the lowest would be in respect of a person in the age group of 60 to 70, which is the normal retirement age, which is further observed by the Apex Court that the multiplier method involved the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed over the period for which the dependency is expected to last. In this regard, it must be noted that the learned Counsel for the revision petitioner sought to put reliance on the observation to the effect that the multiplier is determined also taking

into account the age of the claimant if it is higher than the age of the deceased and on that basis it was urged that the proper multiplier in this case would be that of 5 as claimant's age was over 60 at the time of the accident. However, while making this submission it is conveniently overlooked that the aged mother is not the only claimant but the young brothers of 20 years and 36 years were also the dependents on the income of the deceased, which fact is held to be proved. Moreover, the learned tribunal member has recorded the evidence in that regard and has rightly come to the conclusion that under these circumstances the multiplier would be that of 18 in the present case.

9. I do not see any reason to interfere with the reasoning adopted and the findings recorded by the learned member of the tribunal as the order passed is found to be just, legal and proper and within the four corners of the settled law on the issue. Under the circumstances, the revision is devoid of any merits and thus stands dismissed with no order as to costs.

P.V. KAKADE, J.

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